

## TITLE 329 SOLID WASTE MANAGEMENT BOARD

### #06-70 (SWMB)

#### **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On July 21, 2009, the Solid Waste Management Board (board) conducted the first public hearing/meeting concerning the solid waste processing facilities rule. Comments were made at the first hearing/meeting by the following:

Angela Dorrell, attorney, ESI Environmental, Inc.	(ESI)
Bill Pareskeves, Andrews Engineering	(AE)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* ESI is a used oil facility governed under federal and state used oil facility regulations, and also permitted and governed under 329 IAC. ESI opposes the draft rule changes for three principal reasons. The first, the changes are inconsistent with the federal and state regulations governing the used oil facility. Second, the draft changes are not functionally equivalent, quote unquote, to existing and corresponding solid waste landfill regulations. And third, the actions taken under the amended rule could violate due process requirements.

At this time ESI respectfully requests that the Board extend the comment period to consider further the wide-reaching implications of the draft rule changes as well as to allow the draft rule to be revised to reflect the unique circumstances of the used oil facilities because of the other solid waste processing facilities. (ESI)

*Response:* 329 IAC 13 is applicable to used oil and used oil facilities. The used oil rules will never be functionally equivalent to the solid waste landfill rules because they apply only to used oil facilities, which are a type of solid waste processing facility. However, this rule makes 329 IAC 11, the solid waste processing facility rules, as consistent as feasible with the solid waste land disposal rules in 329 IAC 10. The rule revisions are consistent with due process standards. The Solid Waste Management Board did not choose to extend the comment period or open an additional comment period on this rule.

*Comment:* Well, particularly as set forth in the written comments, the proposed revision to 329 IAC 11-9-1(c) is particularly what ESI finds unnecessary and inappropriate. It is much broader than the existing rules for permit modification, revocation, termination, permits for solid waste landfills and the statutory good character requirements.

Generally speaking, ESI does not believe that the proposed changes should be applicable to it as a used oil facility.

Perhaps one consideration would be to carve out an exception for such facilities. In 329 IAC 11-9-1(c) there is a problem. Also there is no need for the addition of Subsection 4. (ESI)

*Response:* The department believes that both 329 IAC 11-9-1(c) and Subsection

4 are necessary for clarification and to increase the efficacy of the processing rule. However, the department will look at the language of the amendments to 329 IAC 11-9-1 to see if further clarification is needed.

*Comment:* In general I -- my comments are more of minor clarifications and the first one is with regard to the definition of the Emergency Response Plan under 11-2-10.1., which includes actions in regard to the release of gasses or leakage, leachate. (AE)

I would like to add that the word "immediately" in front of "threat to human health or environment" in keeping with the emergency nature of the plan so that it is not expanded to encompass things like long-term corrective action in remediation plans. (AE)

*Response:* The department agrees with this change and will modify the rule to add the word "imminent".

*Comment:* The next comment is on 11-13.5-6(a)(1) is a --appears to be redundancy in the wording about the condition for doors. And I think that needs to be addressed as more of a grammatical situation. It gives two conditions and the first condition covers the second condition so I am not sure if there was supposed to be a different wording in there. (AE)

*Response:* The department agrees with this change and will modify the rule language.

*Comment:* Another comment on 11-13.5-6(a)(4) which requires dual containment or secondary containment of liquid storage systems in one part of the rule. But the other part references that the storage system should meet local codes. Local codes are not typically involved in dual containment of wastewater facilities, that's usually more of a function of petroleum storage. (AE)

*Response:* 329 IAC 11-13.5 6(a)(4) applies to waste liquid storage that is used for liquid waste accepted at the facility for processing such as solidification activity. This storage could be significant in size thus the need for double containment. On the other hand, 329 IAC 11-13.5- 14 applies to handling drainage and liquids originated from the storage, handling and processing of MSW, cleaning floors or washout water from a MSW vehicle at the transfer station that accepts MSW. No change is proposed.

*Comment:* Another comment on the 11-13.5-6(b) talks about processing areas to be clean and litter free. I would like to add to the words "when not in use." Obviously the air condition can't be applied when the processing facilities are being used. Under 11-13.5-6(e) one of the criteria is the word "unsightliness" which is kind of vague and not defined and could be open to interpretation by different people. Processing of waste in general most people would agree is unsightly. There would be a difference, however, between processing it out in the open in front of neighborhood residents or behind a well screened enclosure of the facility. So I would recommend that that either be dropped or better clarified. (AE)

*Response:* The department agrees with this change and will modify the rule.

*Comment:* And then under 11.13.5-6(h) there is an exclusion or exception given to existing outdoor processing facilities that would not be required to install a building with doors. I would recommend that that exemption be included to all existing facilities and the reason is I can think of at least one facility that does not have doors now that it would be difficult to go back and retrofit doors on. So if you are going to exempt outdoor processing facilities, I don't see why you wouldn't exempt three-sided structures that they have an open side also. (AE)

*Response:* Some outdoor solid waste processing facilities have been grandfathered by this rule. Requiring a building for an outdoor solid waste processing facility represents considerable expense to build instead of moderate expense to enclose with doors. Open outdoors solid waste processing facilities are held to the same standards as enclosed lockable solid waste processing facilities, which is to provide for security, and trash and leachate containment.

*Comment:* I did make a copy of my comments and I will turn them in. I'm sorry, I only printed out one copy. The only other comment I had, and this is kind of a forlorn hope, but I would ask the agency to consider incorporating the storm water permitting rules from the water office in with the transfer station. This would be parallel to what's been done with the sanitary landfill facilities and it provides permittees with just one-stop permitting shopping rather than having to do two separate permitting operations. (AE)

*Response:* This change cannot be considered for this rulemaking. This change would go beyond the scope of the first notice.